

# **Division of Water Resources Policy and Procedures For Compliance Enforcement Regulations (“Fines and Penalties”) for Basin Engineers and Field Staff**

## **Mission**

The enforcement regulations are intended to achieve compliance of Nevada's Water Law within a framework that minimizes enforcement; to assure the protection of Nevada's water resources and the public welfare by promoting compliance and deterring noncompliance with the statutes, regulations, permits, certificates, waivers and orders administered and issued by the State Engineer; and to assure that if the State Engineer assesses any administrative penalties, that it is done lawfully, fairly, and equitably.

## **Policy and Procedures**

The following policy is hereby initiated to assure a fair and consistent implementation of the enforcement regulations.

### *Water Planning Engineer*

The Water Planning engineer is the point contact amongst the basin engineers, field staff, administrative staff, the State Engineer and Deputy State Engineers, and the public for issues regarding compliance and enforcement. This will promote a consistency in how these regulations are implemented.

### *Alleged Violations*

Each alleged violation (or group of related alleged violations) will be assigned an “Alleged Violation Number” by the Water Planning engineer at the time of database entry. This number is the “AV No.” field (completed by the Water Planning engineer) shown on the *Investigation of Alleged Violation Summary and Checklist* and the *Requests to Investigate Alleged Violation* forms. This is a unique identifier comparable to all the other numbers that this office assigns in sequence (e.g. applications, certificates, rulings, orders, waivers, etc.). The number itself is arbitrary, and only serves to establish a unique record within the files of the State Engineer, including the database developed to track alleged violations. It does not denote ranking, priority, or timing.

There are two principle ways in which an alleged violator will come under consideration. The first is through staff recommendation based on criteria in the following section. The other is the submission by the public a *Request to Investigate Alleged Violation* form (or an equivalent written complaint). When this form (or its equivalent) is filed, it will be routed to the Water Planning engineer who will assign an Alleged Violation Number, create a database entry, and forward the form to the basin engineer or appropriate field staff for follow-up investigation.

### *Selection Criteria and Field Work*

It is the intention of the State Engineer that this office act methodically and at a deliberate pace towards bringing in the most egregious alleged violators into compliance. To achieve this goal, basin engineers should:

1. Review any pumpage data that has been collected for their basins or have been submitted under a reporting requirement and generate a ranked list of those who have the greatest quantity of over-pumping and a ranked list of those who have the greatest percentage of over-pumping relative to their water rights;
2. Review large irrigation rights for incorrect places of use and points of diversion and generate a ranked list;
3. Flag any immediate concern or unsafe condition for which other methods of regulation have failed to resolve (e.g. a dam safety issue or an open well casing);
4. Identify those applicants who do not have a meter or have not submitted pumping reports per their permit terms;
5. Field investigate *Requests to Investigate Alleged Violation* submitted by the public and forwarded to them from the Water Planning engineer.

An *Investigation of Alleged Violation Summary and Checklist* should be completed and attached to any field investigation or other report outlining the above. This form contains much of the same information as provided for in the *Request to Investigate Alleged Violation* and is just to provide an at-a-glance summary of the “who, what, when, and where” involving the alleged violation. This packet of information should then be passed on to the Water Planning engineer, who will track Alleged Violations and send warning letters (or recommend additional action) per the regulations under NAC 532.

Staff should track the hours spent in the investigation of Alleged Violations in case a penalty is issued, since per subsection 3 of section 20 of NAC 532 the enforcement costs can be assessed in addition to administrative fines. Likewise, any other costs directly related to investigations or enforcement should be documented.

### *Resolution*

Utilizing the information and recommendation of the water resources staff, the Water Planning engineer will prioritize alleged violations and begin the enforcement procedures defined under NAC 532 and the statutes.

When the alleged violator is identified, the first step for bringing them into compliance will be the issuance of a warning letter per NAC 532 Section 18. If the alleged violator takes steps to come into compliance, and continues to do so until in compliance, then no further action beyond monitoring their progress will occur. However, if upon conclusion of time frames established in the warning letter no significant progress has been made, then the Water Planning engineer will recommend other options to be considered under NAC 532, specifically

issuing a Finding of Alleged Violation and Violation Order (FOAV & VO) and/or seeking injunctive relief. A decision will then be made by the State Engineer or his Deputies as to which action to take.

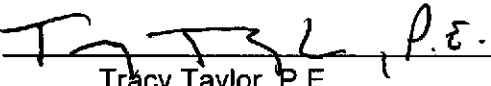
In case of issuance of a FOAV & VO, a timeframe will be established per NAC 532 Section 18, in which the alleged violator must perform all items requested in the VO. This will include a hearing in which the alleged violator must show cause why the Division should not seek injunctive relief. The hearing will be conducted by a Division of Water Resources Hearings Officer and/or Deputy State Engineers. The Division's case will be presented by either the Water Planning Engineer or the Deputy Attorney General serving as the Division's legal counsel, depending on the severity and complexity of the hearing. As a result of the hearing, a decision will be made by the State Engineer that no violation occurred, that no penalty will be issued, or that the penalty panel will determine a penalty. The result of the hearing may also assist in determining if injunctive relief should be sought.

The penalty panel will be comprised of three senior Division of Water Resources staff members. At least one will be a Deputy State Engineer and the remainder will be Section Chiefs. The penalty panel will be assisted by the Water Planning engineer.

The penalty panel will then issue a penalty per NAC 532 Section 20. At this time the violator may accept the penalty, recommend an alternate but equal penalty (this may be done at any time hereafter), or within thirty days appeal to the Independent Advisory Committee (IAC). The IAC will schedule a hearing within thirty days and after the hearing is held the State Engineer, based on the recommendations of the IAC, will make a final decision within thirty days. Within thirty days from the decision the violator may appeal the decision to the District Court.

The goal of the Division of Water Resources is to conserve, protect, and manage Nevada's valuable water resource in a fair and equitable manner by administering and enforcing Nevada water law. This policy serves to guide the Division through the regulations intended to achieve this goal.

Dated this 11 day of Nov, 2009

  
Tracy Taylor, P.E.  
State Engineer